IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 25TH MARCH 2011 / 4TH CHAITHRA 1933

Crl.Rev.Pet.No. 33 of 1999()

CRA.1/1995 of SESSIONS COURT, KOZHIKOE
CC.102/1991 of JUDL.MAGISTRATE OF FIRST CLASS-I,KOYILANDY

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REVN. PETITIONER(S):

VARGHESE GEORGE, KOTIYANKUNNEL HOUSE,
VYTHUR AMSOM DESOM, THALIPARAMBA.

BY ADV. SRI.SIBY J.MONIPPALLY

RESPONDENT(S):

STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERANKULAM.

PUBLIC PROSECUTOR SRI. C.K.SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/03/2011, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl.R.P. No. 33 of 1999

Dated this the 25th day of March, 2011.

O R D E R

The revision petitioner was convicted and sentenced for offences under Sections 279, 337 and 304-A of IPC. He was sentenced to undergo rigorous imprisonment for one year under Section 304-A IPC. He was also sentenced to undergo rigorous imprisonment for 3 months for offence under Section 279 IPC. No separate sentence was awarded for offence under Section 337 IPC. The driving licence of the accused was declared to be suspended for one year under Section 22 of the Motor Vehicles Act. The sentences were to run concurrently. The said conviction and sentence were confirmed in appeal and the appeal was dismissed. Hence, this revision.

2. The prosecution case is that the bus which was allegedly driven in a rash and negligent manner by revision petitioner hit against a jeep which was driven by deceased Muthuswamy, on a public road. Two persons died as a result of

the injury sustained in the accident and other passengers in the bus were injured. Passengers in the jeep were also injured. The bus, after hit, dashed against a tree and then went to the mud portion and stopped at 10 metres away. Both the courts below found that evidence adduced in this case proves that the accused had driven the vehicle in a rash and negligent manner so as to endanger human life and such act resulted in the death of two persons and also caused injuries to various others.

3. Head. Perused the records. PWs 3, 7, 8 and 9 are the injured. PW3 was travelling in the jeep involved in the accident and PWs 7 to 9 were travelling in the bus driven by the revision petitioner. PWs.3, 7 and 9 identified the accused. On an evaluation of the evidence adduced by the prosecution, the appellate court rightly held that the injured witnesses PWs. 3 and 7 to 9 supported the prosecution and gave a version fully consistent with the prosecution case. Their evidence is also supported by evidence of certain other hostile witnesses. Both the courts found that there is nothing to disbelieve the version given by the witnesses who supported the prosecution. On a

perusal of the record and on reading their evidence, I do not find any reason to come to a different finding. It cannot also be said that such findings of facts are perverse.

4. Learned counsel appearing for revision petitioner contended that there is no evidence to support the case of rashness and negligence on the part of the accused in driving the vehicle. So, no negligence or rashness can be attributed to the revision petitioner in causing the incident by driving the bus. It is pointed out that bus cannot be on the wrong side, since as per the scene mahazar, the width of the road was 5.30 metres and the jeep was found at 1.52 metres away from the western tar end towards the eastern side.

5. I fail to understand, how from the material alone it can be said that the bus was not on the wrong side. The middle of the tar road will be 2.68 metres. The bus had crossed even this 2.68 metres from the eastern tar end towards the western side which is its wrong side. Learned counsel appearing for the revision petitioner argued that no value can be attached to the recitals in the scene mahazar. The

evidence of PW1 shows that he is not an eye witness to the occurrence. Therefore, the contention is that based on scene mahazar it cannot be said that bus was on the wrong side.

6. The mere fact that PW1, who pointed out the scene to the Circle Inspector PW2, turned hostile to the prosecution, the court cannot come to the conclusion that PW1 is not an eye witness. The prosecution declared him as hostile and the court has not given any weight to the version given by PW1, since he contradicted his earlier version given to the police. That apart, there is nothing in the evidence of PW21 to show that PW1 had pointed out the scene of occurrence to him. This aspect was not brought from the evidence of PW21.

7. PW3 is an eye witness to the occurrence who was travelling in the jeep. PW7, 8 and 9 were travelling in the bus. All of them stated that the bus was on the wrong side, it is argued by learned Public Prosecutor. But, learned counsel for revision petitioner argued that PWs. 7 8 and 9 cannot be believed. It was submitted that, as per the evidence of PW7,

there was sufficient space for two vehicles to pass, the place of occurrence being the National Highway. It was also argued that PW7 stated in cross-examination that bus was on the proper side.

8. A close reading of the evidence of PW7 shows that what he said was that till the bus reached the place of occurrence, the bus was going along the proper side. But that does not mean that the bus was not on the wrong side when the accident occurred. Learned counsel for the revision petitioner-accused also argued that the evidence of PW8 clearly reveals that he cannot say that the bus was on the wrong side. PW8 admitted in cross-examination that he did not know what is meant by wrong side. But it was pointed out by learned Public Prosecutor that a reading of the whole of his deposition makes it clear that bus was going along the right side of the road and this fact was stated by him to the police. Therefore, the fact that the bus was going along the right side of the road was not only stated by PW8 before the court but this fact was

stated by him to the police also at the earlier point of time.

9. However, it was argued on behalf of the revision petitioner that PW8 would not have sen the incident since he was sitting on the back seat of the bus. This also may not be a ground to interfere in the conviction. It is not clear from the evidence whether by sitting on the back seat PW8's vision was blocked. If a person is sitting on the extreme back seat, there is space between two seats and there can be clear vision. It has not been brought out from his evidence that Pw8 was seated in such a situation which blocked his vision to the scene of occurrence. Therefore, this argument also is not acceptable.

10. It was then argued that speed alone is not a criterion to decide rash and negligence on the part of the driver to constitute an offence under Section 304-A IPC. Reliance was placed on the decision reported n P.S.Jose v. State (1993(2) KLJ 332) wherein it is held that speed alone is not a measuring scale to determine whether the driver was rash or negligent. It was a case where there was a fall of the body

from the cycle just in front of a speedy vehicle which was totally an unforeseen event and even if brake had been applied it would not have been possible to prevent the accident. It is not a case in which, it was necessary to slow down the speed of the vehicle because of nearness to school, hospital etc.

11. The dictum laid down in the said decision cannot be applied to the facts of this case. This is a case in which speed alone is not the reason for the accident. It was pointed out by learned Public Prosecutor that the bus, even after the hit, went 17 metres forward in an uncontrollable manner and hit against a tree and stopped. Had the vehicle been in a controllable speed, this would not have happened. It is also clear from evidence that on the facts and circumstances of this case, the bus ought to have maintained its position on the correct side of the road to avoid hit on any other vehicle coming on the proper side. Therefore, this is a case where both rashness and negligence are proved by satisfactory evidence as held by

the courts below. It is not mere speed alone which contributed to the accident, it was on uncontrollable speed and but for rashness and negligence, the accident could have been prevented.

12. The revision petitioner raised a contention that the vehicle was driven by one Muthuswami who was not competent to drive the jeep. The prosecution proved Ext.P20 which is a licence issued to the said person and there is absolutely nothing in evidence to show that he is not competent to drive the vehicle. The contention raised is that the accident was caused due to the rash and negligent driving of the jeep by the deceased Muthuswami also deserved to be rejected, in the light of cogent evidence including that of the hostile witness which clearly establishes that the driver of the bus alone was rash and negligent in his driving. There is nothing on record to indicate that the jeep was driven in a rash and negligent manner as contented by the petitioner.

13. I do not find any reason to interfere with the

concurrent findings of fact which is based on satisfactory evidence adduced in this case. The conviction is only legal and proper. The sentence also is proportionate to the gravity of offence. In fact, I am of the view that the sentence ought to have been imposed to run consecutively instead of concurrently. Therefore, no interference is warranted.

This revision petition is dismissed.

K.HEMA, JUDGE.

Krs.

K.HEMA, J.

Crl.R.P. No. 33 of 1999

25th day of March, 2011.

O R D E R